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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/668,537

09/23/2003

Don Warburton

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66358 7590 05/28/2008

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EXAMINER

AUSTIN, AARON

ART UNIT

PAPER NUMBER

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DON WARBURTON

Appeal 2008-0819
Application 10/668,537
Technology Center 1700

Decided: May 28, 2008

Before CHUNG K. PAK, CHARLES F. WARREN, and
PETER F. KRATZ, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

ORDER REMANDING TO THE EXAMINER

Applicant appeals to the Board from the decision of the Primary Examiner finally rejecting claims 1 through 36 in the Office Action mailed March 13, 2006. 35 U.S.C. §§ 6 and 134(a) (2002); 37 C.F.R. § 41.31(a) (2005).

We remand the application to the examiner for consideration and explanation of issues raised by the record. 37 C.F.R. §41.50(a)(1) (2007);

Manual of Patent Examining Procedure (MPEP) § 1211 (8th ed., Rev. 3, August 2005).

Our comparison of the scope and content of Appellant's contentions in the Appeal Brief filed December 18, 2006, and in the Reply Brief filed May 7, 2007, reveals that Appellant advances substantial new contentions in the Reply Brief which address the factual foundation of each of the seven grounds of rejection advanced on appeal. *See* App. Br. 8-11, 12-13, 15-16, 17, 19, 20-21, and 22-23; Reply Br. 4-25. Indeed, these contentions are not limited to new contentions raised by the Examiner in response to Appellant's contentions in the Appeal Brief.

Accordingly, the Examiner is required to take appropriate action consistent with current examining practice and procedure to consider and respond to the new arguments in the Reply Brief in a Supplemental Examiner's Answer, with a view toward placing this application in condition for decision on appeal with respect to the issues presented.

This remand is made for the purpose of directing the Examiner to further consider the grounds of rejection. Accordingly, if the Examiner submits a supplemental answer to the Board in response to this Remand which addresses only the arguments in the Reply Brief, Appellant may file a reply brief pursuant to 37 C.F.R. §41.41(a)(1).

We hereby remand this application to the Examiner, via the Office of a Director of the Technology Center, for appropriate action in view of the above comments.

REMANDED

Appeal 2008-0819
Application 10/668,537

PL Initial:
sld

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